IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2249 OF 2003

Abdul Latif Meera Sahib Matte ..Petitioner.
Vs.
Malik Sahib Alli Sahib
since deceased through his L.Rs. ..Respondents.

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Mr K.S. Dewal for the Petitioner.
Mr. A.R. Patil for Respondent Nos.1A and 1B.

...

CORAM: DR. D.Y. CHANDRACHUD, J.

3rd July, 2006.

P.C. :

Though the decree for eviction on the ground of non-user was reversed by the Appellate Court, the decree on the ground that the tenant has acquired suitable alternative residential accommodation has been confirmed. Admittedly, the suit premises consists of one room and a kitchen and admeasure 200 sq. ft. It is not disputed that the tenant acquired alternative premises in the vicinity in Ramiz Apartments and the alternative premises admeasure 600 sq. ft. On these facts, the Trial Judge noted the admission of the tenant in the course of cross examination that the premises that were newly acquired were more spacious and

comfortable. On behalf of the tenant, an effort was made to demonstrate that he had five children and it would appear that an affidavit was filed before the Appellate Court on 17th January, 2003 in which the details pertaining to the children of the tenant including their stage of education was adverted to. The Appellate Court has noted that it was difficult to accept the submission that the newly acquired premises were only additional premises and not alternative premises. The evidence on the record shows that the entire family was in fact residing in the newly acquired premises and the suit premises were casually used for the purposes of studying. On these facts and particularly in the background of the circumstance that the entire family of the tenant was earlier residing in the suit premises consisting only of 200 sq. ft., it cannot be said that the acquisition of residential premises admeasuring 600 sq. ft. does not amount to the acquisition of suitable residential accommodation. Plainly, the view which has been taken by both the Courts below cannot be said to be perverse or such as would warrant the interference by this Court in the exercise of its supervisory jurisdiction under Article 227. The Petition is in the circumstances dismissed. However, having regard to the facts and circumstances of the case, time to vacate the premises is granted

to the Petitioner until 30th April, 2007, subject to the filing of the usual undertaking within a period of two weeks from today.